

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MANUEL DE JESUS ROSARIO,

Plaintiff,

-against-

MIS HIJOS DELI CORP., PALMA GROCERY CORP.,
251 E 123RD ST. REALTY, LLC, JOSE PALMA,
LEONIDA COLLADO, and JUNIOR PALMA,

Defendants.

No. 15-CV-6049 (LTS)(DCF)

DEFENDANT'S LOCAL RULE

**56.1 STATEMENT OF
MATERIAL FACTS**

Defendants, Palma Grocery Corp. and Leonida Collado ("Defendants"), by their attorneys, Rodriguez Law, P.C. and the Law Offices of Martin E. Restituyo, P.C. in support of its Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, submit the following Statement of Material Facts pursuant to Rule 56.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York:

1. The last Employee Payroll Report for Palma Grocery was for the month May 2013. (Mund 490, Ex. 1).
2. The first Employee Payroll Report for Mis Hijos was for the month June 2013. (Mund 415, Ex. 2).
3. The last tax return for Palma Grocery is for 2012 (Exhibit 3) and the first tax return for Mis Hijos is for 2013 (Exhibit 4).
4. New York Department of State records show that Mis Hijos was incorporated on May 21, 2013. (Exhibit 5).
5. In his own words, Plaintiff Mr. Rosario himself testified that Palma Grocery's sign came down and a new sign went up in 2013 (for Mis Hijos). (Exhibit 6).

6. Plaintiff further testified that the store closed in 2013, reparations were done, and the store opened with a new sign. (Exhibit 7).

7. Defendant Junior Palma testified that Palma Grocery closed in May 2013 due to economic difficulties and that Mis Hijos began business at the same location in June 2013. (Exhibits 8 and 9).

8. The corporate report for Palma Grocery from the New York State Liquor Authority indicates that Leonida Collado was the sole stockholder. (Exhibit 10).

9. The New York Department of State's corporation database records indicate that Ms. Collado was the Chief Executive Officer of Palma Grocery. (Exhibit 11).

10. Tax returns from Palma Grocery indicate that Ms. Collado was the only stockholder. (Exhibit 3).

11. Ms. Collado explained that she alone was the owner (Collado Depo. 11:2 – 11:3, Exhibit 12) that she was always the owner at all times (Collado Depo. 15:20 – 15:23, Exhibit 13), and that she has always been running Palma Grocery on her own since 1981 (Collado Depo. 18:18 – 18:20, Exhibit 14).

12. Ms. Collado's testimony is also corroborated by Defendant Junior Palma, who testified at his deposition that Ms. Collado was the owner of Palma Grocery. (Junior Palma Depo. 14:3 – 14:12, Exhibit 15).

13. In her deposition, Ms. Collado testified that she gave up the business and surrendered the lease in May 2013. (Collado Depo. 31:13 – 31:20, Exhibit 16).

14. She also testified that she was no longer operating the store after May 2013 as her grocery store, Palma Grocery, closed. (Collado Depo. 87:13 – 87:19, Exhibit 17).

15. This testimony was also corroborated in the deposition of Jose Palma, where he testified that Ms. Collado was the owner of Palma Grocery (Jose Palma Depo. 28:24 -29:5, Exhibit 18), and Junior Palma (Junior Palma Depo. 14:5 – 14:7, Exhibit 19).

16. Plaintiff commenced this action on August 3rd, 2015 [Dkt. No. 5].

17. Ms. Collado testified that she not only had discussions with her attorney and accountant, Mitchell Mund, regarding the manner and method of payment of her employees, but more importantly, that Mr. Mund advised her on how to pay her employees and was involved in setting both the manner and method of payment to her employees. (Collado Depo. 25:6 – 25: 16, Exhibit 20).

18. Similarly, she also relied on Mr. Mund for recordkeeping issues and maintaining records regarding how much plaintiff was paid, his number of hours and rate of pay. (Collado Depo. 24:5 – 24:10, Exhibit 21).

Dated: New York, New York
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